IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-277

DOYON, LIMITED, et al.,
Petitioners,
v.
BRISTOL BAY NATIVE CORPORATION, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS AHTNA, INC.; THE ALEUT CORPORATION; ARCTIC SLOPE REGIONAL CORPORATION; BRISTOL BAY NATIVE CORPORATION; CALISTA CORPORATION; CHUGACH NATIVES, INC.; COOK INLET REGION, INC.; KONIAG, INC.; NANA REGIONAL CORPORATION, INC.; SEALASKA CORPORATION; AND 13TH REGIONAL CORPORATION

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QUESTION PRESENTED

The Alaska Native Claims Settlement Act [1] extinguished the aboriginal land claims of Alaska's Natives in exchange for compensation. Thirteen regional corporations and over 200 village corporations were formed under the Act, with the Natives receiving stock in the corpora-

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[1] Act of December 18, 1971, 85 Stat. 688, as amended, 43 U.S.C. §§ 1601 *et seq.* ("ANCSA" or the "Act").

tions formed for the region and village to which they enrolled. Under a complex land selection scheme, each corporation receives title to specified amounts of land. The regional corporations also receive monetary distributions from the Alaska Native Fund based on the number of Natives enrolled in each region, and must redistribute portions of these funds on a per-share basis to their stockholders and village corporations. However, before distributions from the Fund began, the Natives of villages on certain former reserves could elect to take title to their reserves *in lieu of* all other benefits, including stock in the regional corporation formed for their region.

The question presented is whether Natives who elected to take title to their former reserves, and therefore have no ties to a regional corporation, may be counted by a regional corporation in computing its share of the Alaska Native Fund.

STATUTE INVOLVED

The following provisions of ANCSA are here involved:

> SEC. 5. (a) The Secretary shall prepare within two years from the date of enactment of this Act a roll of all Natives who were born on or before, and who are living on, the date of enactment of this Act. . . . (43 U.S.C. § 1604(a))
>
> * * * *
>
> SEC. 6.
>
> (c) After completion of the roll prepared pursuant to section 5, all money in the Fund . . . shall be distributed at the end of each three months of the fiscal year among the Regional Corporations organized pursuant to section 7 on the basis of the relative numbers of Natives enrolled in each region. . . . (43 U.S.C. § 1605(c))
>
> * * * *

> SEC. 7.
>
> (g) The Regional Corporation shall be authorized to issue such number of shares of common stock . . . as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 5. (43 U.S.C. § 1606(g))
>
> * * * *
>
> (j) During the five years following the enactment of this Act, not less than 10% of all corporate funds received by each of the twelve Regional Corporations under section 6 (Alaska Native Fund), and under subsection (i) (revenues from the timber resources and subsurface estate patented to it pursuant to this Act), and all other net income, shall be distributed among the stockholders of the twelve Regional Corporations. Not less than 45% of funds from such sources during the first five-year period, and 50% thereafter, shall be distributed among the Village Corporations in the region. . . . (43 U.S.C. § 1606(j))
>
> (k) Funds distributed among the Village Corporations shall be divided among them according to the ratio that the number of shares of stock registered on the books of the Regional Corporation in the names of residents of each village bears to the number of shares of stock registered in the names of residents in all villages. (43 U.S.C. § 1606(k))
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> * * * *
>
> SEC. 19.
>
> (b) Notwithstanding any other provision of law or of this Act, any Village Corporation or Corporations may elect within two years to acquire title to the surface and subsurface estates in any reserve set aside for the use or benefit of its stockholders or members prior to the date of enactment of this Act. . . . In such event . . . the Village Corporation shall not be eligible for any other land selections under this Act or to any distribution of Regional Corporation funds pursuant to section 7, and the enrolled

residents of the Village Corporation shall not be eligible to receive Regional Corporation stock. (43 U.S.C. § 1618(b))

STATEMENT OF THE CASE

Petitioners' statement omits any reference to the following significant facts:

1. As required by section 19(b) of the Act, 43 U.S.C. § 1618(b), the villages in petitioners' regions elected to take title to their former reserves[2] *before* the December 18, 1973, deadline set by ANCSA for completion of the roll of Natives and commencement of distributions from the Alaska Native Fund (the "Fund").

2. The Act provided for the creation of a regional corporation for each region and a village corporation for each eligible Native village in Alaska. Upon completion of the roll of Natives, each regional corporation, as required by section 7(g), 43 U.S.C. § 1606(g), issued one hundred shares of stock "to each Native enrolled in the region pursuant to section 5," except that no regional corporation stock was issued to the Natives enrolled to the six reservation villages in petitioners' regions. Each Native enrolled to a village also received village corporation stock.

3. The regional corporations must distribute a portion of the money they receive from the Fund to their stockholders and the village corporations in their region. Specifically, under section 7(j), 43 U.S.C. § 1606(j), each

[2] The six reserves had previously been set aside for use of the Native villages located thereon by legislation, Executive Order or action of the Secretary of the Interior. Until the passage of ANCSA, the reserves were trust lands, comparable to Indian reservations in the lower 48 states.

regional corporation (except the thirteenth)[3] must for five years redistribute to its stockholders 10 percent of the money it receives. Also for five years, 45 percent of this money (and thereafter 50 percent) must be distributed on a per-share basis to the village corporations in the region and the class of regional corporation stockholders who are not residents of a village. The thirteenth regional corporation must distribute 50 percent of its receipts to its stockholders. No distributions are made by a regional corporation to a village corporation which elected to take title to its former reserve.

4. If, as the Court of Appeals held, the reservation villages are excluded in determining a regional corporation's share of the Fund, all regional corporations will receive from the Fund precisely identical amounts of money *per stockholder*, being approximately $12,464. In contrast, under the position urged by petitioners, eleven respondent corporations each would receive approximately $12,225 *per stockholder*, while petitioners Doyon, Limited ("Doyon") and Bering Straits Native Corporation ("Bering Straits") would receive $12,819 and $14,298, respectively, *per stockholder*. *See Doyon, Ltd.* v. *Bristol Bay Native Corp.*, 569 F.2d 491, 493 n.5 (9th Cir. 1978) (App. A of Petition at 5a n.5). Similarly, under the appellate court's ruling, the above-described redistribution of monies by the regional corporations would yield to the Natives and village corporations in the twelve land-based regions precisely identical amounts per stockholder, regardless of regional affiliation, while petitioners' posi-

[3] Under sections 5(c) and 7(c) of the Act, 43 U.S.C. §§ 1604(c) and 1606(c), Natives who are not permanent residents of Alaska could elect to be enrolled to a thirteenth region intended solely for such non-residents. That regional corporation, respondent 13th Regional Corporation, was incorporated on December 31, 1975. *See Alaska Native Ass'n. of Oregon* v. *Morton*, 417 F. Supp. 459 (D. D.C. 1974). 13th Regional Corporation received no land under the Act and has no village corporations to which monetary distributions are to be made.

tion would cause their Natives and village corporations to fare somewhat better than the others.

5. The election by the six villages in petitioners' regions to acquire title to their former reserves will cause Bering Straits to suffer a loss of 335,132 acres in subsurface entitlement under section 12 of ANCSA, 43 U.S.C. § 1611, but will cause Doyon a gain of 17,501 acres of subsurface entitlement.[4] In addition, while Bering Straits has no surface entitlement regardless of the election, Doyon, through the election, will gain 195,753 acres in surface entitlement.[5]

6. Finally, petitioners assert throughout their statement of the facts that the Natives who elected to take title to their former reserves are "enrolled in [petitioners'] regions" and that the Secretary's roll showed them so enrolled. This is a conclusion of law which presumes in part the answer to the only issue here presented, of whether they are so enrolled for purposes of section 6(c). A correct statement would be that these Natives were enrolled to villages or other places geographically located in the Doyon or Bering Straits regions, and this is all that the Secretary's roll in fact showed.

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[4] 335,132 less 17,501 yields the 317,631 acre *net* loss petitioners claim for both regions combined. (*See* Petition at 7.) The gain by Doyon in turn also is a net gain, resulting from the complex interaction of sections 12(a)-(c). Doyon experienced (i) a loss of 276,480 acres of subsurface under section 12(a) (because it has fewer villages able to select land under that section), (ii) a gain of 98,228 acres under section 12(b) (because less land has been selected under section 12(a) by all villages combined), and (iii) another gain of 195,753 acres under section 12(c) (because Doyon received less land under sections 12(a) and (b) combined).

[5] Petitioners nowhere explain the relevance of the facts they present on land entitlement, and we can only assume they are designed to show that petitioners somehow *deserve* to receive more money than the other regional corporations. But, as shown, only Bering Straits lost land through the election and therefore only it might for this reason argue that it should have the additional money. By petitioners' logic, Doyon, having gained land, should receive less money than the other regions.

ARGUMENT

I.

THE CASE PRESENTS NO MAJOR QUESTION OF FEDERAL LAW.

It is important to keep in mind what is *not* put forward by petitioners as grounds for the writ. Petitioners do not claim that the decision of the Court of Appeals creates a conflict among the circuits.[6] Nor is this a case in which the decision below creates a hindrance to the effective administration of a statute (*see, e.g., Rothensies* v. *Electric Storage Battery Co.*, 329 U.S. 296 (1946)), or conflicts with an administrative interpretation (*see, e.g., Patterson* v. *Lamb*, 329 U.S. 539 (1947)). The case also has no impact on the administration of the public lands (*see, e.g., United States* v. *Coleman*, 390 U.S. 599 (1968)), nor affects the interests of the State of Alaska. Finally, no question arises as to the fiduciary duty of the United States, for the dispute is one among Natives.[7]

All that is involved here is a narrow question over the meaning of certain words in section 6(c) of ANCSA, 43 U.S.C. § 1605(c), and this question is neither of the type nor the magnitude to warrant review by this Court. The answer to the question will affect implementation of

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[6] Any possibility of a conflict on the issue before the Court was eliminated by the transfer of this case from the United States District Court for the District of Columbia to the United States District Court for the District of Alaska. In the District of Columbia, only three of the regional corporations were parties, and the transfer occurred so that all regional corporations could be joined. (Petition at 8.) All regional corporations are required to be incorporated under the laws of Alaska (*see* section 7(d), 43 U.S.C. § 1606(d)), and not all transact business or maintain a presence outside that state.

[7] There is no question here over the *total* distributions from the Fund, but only over how the amount is to be divided among the regions.

sections 7(i) and 12(b), 43 U.S.C. §§ 1606(i) and 1611 (b), but beyond that it will have virtually no precedential value, not even as to other unrelated disputes which have arisen under ANCSA.

Even as to section 6(c), the importance of the case is quite limited. While there would be a shift of about $15 million in distributions between two of the regional corporations and the other eleven, the amount is less than 1.6 percent of the total of $962,500,000 distributable under section 6(c).[8]

For these reasons, review by this Court is unnecessary.

II.

THE CASE RAISES NO SUBSTANTIAL QUESTION REGARDING THE STATUS AND APPLICATION OF THE SO-CALLED "PLAIN MEANING RULE".

Petitioners further claim that the ruling of the Court of Appeals did great violence to the plain meaning rule and the cases decided by this Court which, in certain instances of clear statutory language, prohibit a court from looking beyond the letter of the law. But discussion of the plain meaning rule is of scant relevance here. The court below was far less able or willing than petitioners are to discern in the statutory words any one, plain meaning. It is not at all clear that Natives who receive no regional benefits and have no ties to the region are "enrolled in the region". Moreover, the court was justified in reaching the result it did, notwithstanding any plain meaning, because only in this manner could it avoid the

[8] The same applies to distributions under section 7(i). The amount so distributable is open-ended and ultimately indeed may exceed the $962,500,000 payable by the Fund (*see* Petition at 10, n.4), but the outcome of this case can affect no more than 1.6 percent of 7(i) distributions, no matter what their total eventually is.

absurd result of having two regions, their stockholders and villages singled out for preferred treatment over all others, thereby utterly destroying the equality of treatment in distributions from the Fund that ANCSA contemplated. This inequitable result would have no basis in logic or reason, but would come about by pure happenstance, or luck. And the court found ample evidence, in the scheme of the Act as a whole and its legislative history, that such a result was directly contrary to what Congress intended.

A. The Words at Issue are Ambiguous.

The court below cited *Train* v. *Colorado Pub. Int. Research Group, Inc.*, 426 U.S. 1, 10 (1976), to support its right to explore "extrinsic evidence" of meaning. *Doyon, Ltd.* v. *Bristol Bay Native Corp., supra*, 569 F.2d at 494 (App. A of Petition at 7a-8a). But it also found that the term "Natives enrolled in each region" "is susceptible to two different interpretations." *Id.* Reliance on *Train* therefore was not essential. *Train* and the related cases apply only when the words at issue have a single, clear meaning. This is not the case here.

One meaning of "enrolled in the region" is that which petitioners call "plain". It rests exclusively on the language of section 5, that "[t]he roll prepared . . . shall show for each Native . . . the region and the village . . . in which he resided on the date of the 1970 census enumeration, and he shall be enrolled according to such residence." 43 U.S.C. § 1604(a). Since section 19(b) nowhere speaks of formally "disenrolling" the reservation Natives from the region, they are "enrolled in the region". To be "enrolled in the region" thus means to be listed on the physical roll as having resided in the region on a certain date. This meaning, however, is more simplistic than plain. It requires a highly superficial reading of the word "enrolled" to refer solely to the actual

physical list called the roll, carefully avoiding any reference to any legal consequences flowing from the enrollment process.[9]

Enrollment is one of the most crucial features of ANCSA. It is the sole vehicle for determining a Native's eligibility for particular benefits under the Act. To be "enrolled in the region" is to be certified as eligible to own stock in that regional corporation.[10] All other benefits of the Act then flow from such stock ownership.

Under this meaning of "enrolled", as descriptive of eligibility for benefits, the reservation Natives are *not* enrolled in petitioners' regions, for they do not possess a single characteristic inherent in regional enrollment, and are ineligible for any regional benefits. Before the December 18, 1973, deadline for completion of the roll, they elected to take title to their reserves in lieu of all other benefits.[11] They therefore never received regional corporation stock and do not share in the ownership of the corporation's assets. Neither they nor their village corporations can ever receive distributions from the regional corporation. And the village corporations are ineligible for any other land selections under the Act. The regional corporation also does not receive title to the

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[9] The word "enrolled" is never actually defined in the Act. The Act merely prescribes an enrollment process, in section 5.

[10] Section 7(g), 43 U.S.C. § 1606(g), requires the issuance of one hundred shares of regional corporation stock "to each Native enrolled in the region pursuant to section 5."

[11] It is not a question of their having once been enrolled to the region and then having disenrolled. They never did enroll to the region, opting instead to enroll only to their village. They of course had to enroll to the village, so as to be eligible to vote in the election and then to receive village corporation stock, thereby sharing in the ownership of the reserve, title to which is held by the village corporation.

subsurface estate of the reserve,[12] and the revenue from this subsurface estate in turn is not shared with other regions under section 7(i).

In short, the reservation Natives' disassociation from the region is *total*.[13] In the face of this, to say that these Natives are "enrolled in the region" is an almost meaningless statement. This hardly can be the "plain" meaning. In truth, the words of section 6(c) are ambiguous, or, if they have a single meaning, it is just the opposite of that which petitioners put forth. In either event, the plain meaning rule has little bearing here.

B. Even Assuming a "Plain" Meaning, the Court of Appeals Correctly Followed the Applicable Rules of Statutory Construction.

The court below clearly was correct in reading the applicable cases as allowing it to look beyond any possible plain meaning of the words. Petitioners rely on *Crooks* v. *Harrelson*, 282 U.S. 55 (1930), and *TVA* v. *Hill*, —— U.S. ——, 57 L.Ed.2d 117 (1978), as requiring almost blind adherence to the letter of the law. But even under *Crooks*, a court may look to extrinsic evidence of a statute's intent in order to avoid a wholly absurd result. 282 U.S. at 59-60. And petitioners ignore almost entirely a long line of cases decided between *Crooks* and *Hill* which modified the *Crooks* rule considerably. Only four years after *Crooks*, in *Helvering* v. *New York Trust Co.*, 292 U.S. 455 (1934), the Court, without even citing *Crooks*, qualified the plain meaning rule as follows:

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[12] In contrast, the regional corporations receive title to the subsurface estate to all "normal" village corporation selections, under section 12. *See* section 14(f), 43 U.S.C. § 1613(f).

[13] So much so that, in 1976 amendments to ANCSA, Congress provided for a $100,000 grant to each of the six village corporations which elected to take title to its former reserve. Act of January 2, 1976, P.L. 94-204, 89 Stat. 1145, 1154, section 14(b).

> "[T]he expounding of a statutory provision strictly according to the letter without regard to other parts of the Act and legislative history would often defeat the object intended to be accomplished. . . . Quite recently in *Ozawa* v. *United States*, 260 U.S. 178, we said (p. 194): 'It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail.'" (292 U.S. at 464-65.)

A few years later, in *United States* v. *American Trucking Ass'ns., Inc.*, 310 U.S. 534 (1940), the Court described the functions of federal courts in interpreting statutes with so-called plain meanings:

> "It is to construe the language so as to give effect to the intent of Congress. . . .
>
> "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words." (310 U.S. at 542-44.)

In a long line of cases since then, this Court has adhered to this policy,[14] and in 1976 it decided *Train* v. *Colorado Pub. Int. Research Group, Inc.*, *supra*, on which the Court of Appeals relied.

The recent decision in *TVA* v. *Hill*, *supra*, does not appear to alter these principles. The Court there cited *Crooks*, *supra*, and reached a result consistent with the statutory language. But the Court's majority also found the words in question to be unambiguous, 57 L.Ed.2d at 133, and the result achieved was not absurd. More importantly, an elaborate legislative history and statutory scheme showed that that result was precisely what Congress had intended. *Id.* at 140. Thus none of the cases preceding *Hill* would have mandated the opposite result, and no departure from those cases was necessary.

Here, however, the Court of Appeals was justified in looking beyond the alleged plain meaning under any standard, including *Crooks*, in order to avoid an utterly absurd result, or at least a highly incongruous one. Petitioners' "plain" meaning would cause their two regions, their villages and stockholders to be singled out for special treatment. ANCSA's carefully structured distribution scheme would yield for the other eleven regions, their villages and stockholders, precisely identical distributions from the Fund, regardless of region. Petitioners, how-

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[14] *See, e.g., Markham* v. *Cabell*, 326 U.S. 404, 409 (1945) ("The policy as well as the letter of the law is a guide to decision."); *Mastro Plastics Corp.* v. *NLRB*, 350 U.S. 270, 285 (1956) ("[W]e must not be guided by a single sentence . . . but look to the provisions of the whole law, and to its object and policy."); *Kokoszka* v. *Belford*, 417 U.S. 642, 650 (1974) ("When 'interpreting a statute, the court will not look merely to a particular clause . . . but will take in connection with it the whole statute . . . and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature. . . .'"); *see also Philbrook* v. *Glodgett*, 421 U.S. 707, 713-14 (1975); *Perry* v. *Commerce Loan Co.*, 383 U.S. 392, 400 (1966); *Cox* v. *Roth*, 348 U.S. 207, 209 (1955); *Harrison* v. *Northern Trust Co.*, 317 U.S. 476, 479 (1943).

ever, would get somewhat more, and for no apparent reason, but purely by chance. Even more absurd, the Natives enrolled to the reservation villages, whose presence would cause petitioners' windfall, would not share therein. The added revenue which their presence helped bring about would go, not to them, but entirely to the regional corporation, in which they have no interest.

The result under section 7(i) makes even less sense.[15] The ten land-based corporations would share their resource revenues with petitioners on a basis which included the reservation Natives in petitioners' regions, but those Natives would not have to share the resource revenues from their reserve with anyone, including petitioners. Beyond question, the court below rightly sought to avoid such a result.

But, petitioners argue, the court below could not avoid the plain meaning, regardless of any absurdity, because there was insufficient basis for any contrary result. The court, it is said, misconstrued and misapplied *Train* v. *Colorado Pub. Int. Research Group, Inc.*, *supra*, and the error must be corrected. Petition at 17-21.

The extrinsic evidence relied on must of course be unambiguous. "[T]here must be something to make *plain* the intent of Congress that the letter of the statute is not to prevail." *Crooks* v. *Harrelson*, *supra*, 282 U.S. at 60. (Emphasis added.) As the Court said in *Ex Parte Collett*, 337 U.S. 55 (1949), quoting from *Gemsco, Inc.* v. *Walling*, 324 U.S. 244, 260 (1945):

> "The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." (337 U.S. at 61.)

[15] Section 7(i), 43 U.S.C. § 1606(i), requires each regional corporation to distribute seventy percent of all revenues it receives from its timber resources and subsurface estate among all regional corporations "according to the number of Natives enrolled in each region pursuant to section 5."

The legislative history relied on must be persuasive. Beyond that, however, the court may look to the statute as a whole and its objects and policy, as indicated by the various provisions, so as to construe it as Congress intended. *Philbrook* v. *Glodgett*, *supra*, 421 U.S. at 713-14; *Kokoszka* v. *Belford*, *supra*, 417 U.S. at 650; *Mastro Plastics Corp.* v. *NLRB*, *supra*, 350 U.S. at 285. The provisions of a statute must be read so that all are effective, and the statute is rendered a consistent and harmonious whole. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 631-32 (1973); *Koenigsberger* v. *Richmond Silver Mining Co.*, 158 U.S. 41, 48 (1895).[16]

The legislative history here available is both highly persuasive and totally unambiguous. The court relied in part on the report of the House Committee on Interior and Insular Affairs on H.R. 10367, 92d Cong., 1st Sess. (1971), which passed the House only two months before ANCSA became law. Section 6(g) of H.R. 10367 contained the distribution formula for resource revenue, comparable to section 7(i) of ANCSA, and the relevant language of 6(g), that distributions be based on "the number of Natives enrolled in each region," was carried over into section 7(i). The Committee explained section 6(g) as follows:

> "In order that all Natives may benefit equally from any minerals discovered within a particular region, each corporation must share its mineral revenues with the other 11 corporations *on the basis of the relative numbers of stockholders in each region.*" (H. Rep. No. 92-523, 92d Cong., 1st Sess. 6 (1971); emphasis added.)

[16] As the Court found in *TVA* v. *Hill*, *supra*: "[The plain intent of Congress] is reflected not only in the stated policies of the Act, but in literally every section of the statute." 57 L.Ed.2d at 140.

The reservation Natives are not stockholders of a regional corporation. Petitioners may call this evidence "flimsy", but a clearer or more authoritative statement of meaning, involving the very words here at issue, would be hard to imagine. The court below had also other legislative history to guide it.[17] Petitioners do not claim that the legislative history is ambiguous.[18] They merely question its adequacy when compared to the "voluminous" legislative history available in *Train*. Petition at 18. But it is the *quality* of legislative history, not its quantity, which justifies the departure from a plain meaning, and *Train* does not dictate otherwise.

The court below, moreover, was guided by more than just legislative history. It found that "the entire scheme of the Act" treats all Natives equally as to the Act's monetary benefits and that this could be accomplished only by excluding reservation Natives in calculating distributive shares from the Fund. 569 F.2d at 495 (App.

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[17] The report of the Senate Committee on Interior and Insular Affairs, on S. 35, 92d Cong., 1st Sess. (1971), the version of ANCSA which passed the Senate, said that "all eligible Natives . . . are entitled to an *equal share* in assets provided as compensation. . . ." S. Rep. No. 92-405, 92d Cong., 1st Sess. 79 (1971). (Emphasis added.) Based in part on this report, the court below concluded that such equality was intended "with respect to the monetary portion of the settlement." 569 F.2d at 495 (App. A of Petition at 8a-9a). Petitioners contend that section 16(c) of ANCSA somehow proves this statement wrong. Section 16(c), 43 U.S.C. § 1615(c), provides that certain funds previously appropriated for the Natives of one region, to pay a 1968 Court of Claims judgment they had won (*see Tlingit and Haida Indians of Alaska* v. *United States*, 389 F.2d 778 (Ct. Cl. 1968)), are "in lieu of the additional acreage to be conveyed to qualified villages listed in section 11." The region's villages therefore receive less land than other villages. As to money from the Fund, however, the region shares on the same basis as all others.

[18] In all the briefs filed to date, petitioners have yet to cite to any legislative history favoring their position.

A of Petition at 8a-9a).[19] It thus had ample evidence on which to conclude that Congress' intent was just the opposite of petitioners' alleged plain meaning. Its ruling was fully consistent with *Train* and the other cases cited by petitioners.[20]

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[19] Specifically, the exclusion of reservation Natives for section 6(c) purposes initially yields each regional corporation an equal per-capita share in the first round of distributions, from the Fund to the regions. Then, under sections 7(j), (k) and (m), requiring a partial redistribution, Natives and village corporations in *all* regions again are treated equally. *Within* each region equality is also created. The monetary distribution scheme petitioners seek would create equality *within* each region, and *inter*-regional equality for eleven of the regions. Only the two petitioners would not achieve inter-regional equality, either with the other eleven, or with each other. In addition, *see* the Court of Appeals' discussion of joint regional and village corporation ventures, which, it found, were intended to be undertaken only for the benefit of regional stockholders, *not* reservation Natives. 569 F.2d at 495-96 (App. A of Petition at 10a-11a.)

[20] There also exists no substantial question over the extent of the court's deference to the Secretary of the Interior's interpretation of ANCSA. Any expressed deference was hardly essential to the outcome. In any event, as this Court said in *Udall* v. *Tallman*, 380 U.S. 1 (1965), quoting from *Power Reactor Development Co.* v. *Int'l. Union of Electrical, Radio and Machine Workers*, 367 U.S. 396, 408 (1961): "Particularly is this respect [for an administrative interpretation] due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'" 380 U.S. at 16.

CONCLUSION

For the foregoing reasons the petition for a writ of *certiorari* should be denied. The Court also should deny petitioners' request that the case be remanded to the Court of Appeals for reconsideration in light of *TVA* v. *Hill, supra.*

Respectfully submitted,

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